



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Encon Management Incorporated

File: B-234679

Date: June 23, 1989

DIGEST

1. Protest that agency improperly failed to make award to the lowest-priced, technically acceptable offeror is denied where solicitation provided for award to the offeror submitting the most advantageous proposal, considering price and technical factors, and agency reasonably made a price/technical tradeoff in selecting a technically more advantageous, higher-priced offeror.

2. Protest that meaningful discussions were not conducted with the protester is denied where, after protester responded to agency's technical deficiency question, agency no longer found protester's proposal deficient and where, in any event, agency's ultimate concern was in regard to firm's actual experience which could not be remedied during discussions, rather than inadequacies in firm's presentation of its experience.

DECISION

Encon Management Incorporated protests the award of a time and materials contract to George G. Sharp by the Maritime Administration (MARAD) under request for proposals (RFP) No. DTMA91-89-R-90008 for technical support services to monitor the reactivation and conversion of two vessels to auxiliary crane ships. Encon argues that MARAD did not evaluate proposals in accordance with the RFP's criteria and did not hold meaningful discussions with the firm. In addition, Encon claims it is entitled to recover the costs of preparing its proposal and pursuing its protest.

We deny the protest.

The RFP, issued on November 4, 1988, as a small business set-aside, primarily calls for four ship inspectors to report and monitor work progress involving the conversion and reactivation of two containerships into fleet support crane ships, for a period of approximately 17 months. The

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underlying contract to perform the conversion and reactivation work was awarded on January 27, 1989, to Norfolk Shipbuilding and Drydock Corporation (Norshipco) for \$42,892,488.

The RFP required the submission of technical and cost proposals and set out the following major evaluation criteria: (1) Price, (2) Technical Qualifications of Proposed Professional and Engineering Personnel in Commercial Vessel Design, Construction, Repair and/or Overhaul, (3) Proposed Technical, Cost Management and Personnel Utilization Plan, and (4) Corporate Experience in Commercial Vessel Design, Plan Approval and Inspection. Criteria (1) and (2) were deemed equal in weight and considered more important than criteria (3) and (4). Criterion (4) was deemed least important. Price accounted for 35 percent of the evaluation points under the RFP, with the remaining 65 percent relating to non-cost factors. The RFP specifically notified offerors that although "price/cost will be a significant factor in the award decision . . . the award may not necessarily be made to that offeror submitting the lowest price/cost." The RFP further provided that "award will not necessarily be made for technical capabilities that would appear to exceed those needed for the successful performance of the work." Considering both technical and price factors, the contract was to be awarded to the offeror whose proposal was judged to be the most advantageous to the government.

In response to the solicitation, six small business firms submitted proposals by the December 12, 1988, closing date. After an initial technical evaluation, the technical evaluation team found four offerors, including Encon and Sharp, to be in the preliminary competitive range for purposes of discussions. By letter of January 27, 1989, each of the four firms was requested to respond, by January 31, to technical deficiency questions regarding its particular proposal. Based upon the firms' responses, MARAD's technical evaluation team found that no additional technical deficiencies existed in the proposals and, thus, MARAD did not conduct further technical negotiations with the offerors. Encon and Sharp were thereafter included in the final competitive range, along with one other offeror. Discussions were held with Encon by telephone on February 7, during which time several items affecting price/cost factors were discussed. The agency reports that on February 9, after best and final offers (BAFOs) were received, the following adjusted point scores, which included price, were assigned to the Encon and Sharp proposals:

-	Sharp	93.1 (63 technical, 30.1 price)
	Encon	90 (55 technical, 35 price)

Encon's evaluated price of \$325,231 was low, and Sharp's evaluated price of \$372,685, was second low. Award was made to Sharp on February 23, after the agency determined that Sharp's superior technical proposal was worth the difference in evaluated price, and that the firm's proposal was the most advantageous to the government. Encon's protest was filed with our Office on March 3. MARAD reports that in its determination of the best interests of the government, the agency has not suspended performance of the contract pending this protest.

Encon essentially argues that the RFP's terms (i.e., award to the "most advantageous" proposal) required the agency to make award to the protester because its proposal was found technically acceptable (since it was included in the competitive range), and it offered the lowest price. In this regard, Encon asserts that since price was a predominant evaluation criterion, equal in weight only to professional personnel qualifications, the agency failed to adhere to the RFP's evaluation criteria in making an award to Sharp. The protester, in essence, does not challenge the agency's determination that Sharp's proposal was found to be technically superior to Encon's but instead contends that, given the technical acceptability of Encon's proposal, the award to Sharp, at a higher price, was contrary to the terms of the RFP and unreasonable because the agency improperly gave undue weight to the least important technical evaluation criterion, corporate experience. Finally, Encon argues that the agency did not hold meaningful discussions with the firm regarding experience.

With regard to the allegation that award to Sharp's higher-priced offer was contrary to the RFP, the agency reports that since the RFP provides for award to the most advantageous proposal based upon a technical/price relationship, it was under no requirement by virtue of the solicitation's terms to make award to the lowest-priced, technically acceptable offeror. We agree.

Generally, the government is not required to make award to a technically acceptable firm offering the lowest price under an RFP unless the RFP specifies that price will be the determinative factor. Here, the RFP award criteria did not require award to the low-priced offeror. It in fact expressly advised that the contract would not necessarily be awarded to the low-priced offeror and effectively permitted a technical/cost tradeoff. Thus, contrary to Encon's

assertion, award to Encon as the low-priced offeror was not required by the RFP.

Encon also challenges as unreasonable the technical/cost tradeoff decision.^{1/} Cost/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the established evaluation criteria. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325.

Here, the record shows that while MARAD did find that Encon submitted an acceptable proposal, the technical evaluation team found Sharp's proposal technically more advantageous than the proposal submitted by Encon. Although Encon's proposal was lower in price than Sharp's, price accounted for only 35 percent of the total evaluation points available. Encon's proposal ranked lower than Sharp's under all three of the technical evaluation criteria. The agency concluded that Sharp's proposal was the most advantageous offer to the government, based in part upon the technical advantage of Sharp's proposal under each of the non-cost evaluation criteria, as well as Sharp's extensive inspection knowledge and experience in performing five previous and two current auxiliary crane ship conversion/reactivation projects of similar scope and magnitude.^{2/} Sharp's inspectors also had valuable experience inspecting the same type of work with Norshipco, the contractor whose conversion work will be monitored, and were familiar with Norshipco's facilities, personnel and work processes. The Encon proposal did not offer this job specific experience. We find no reason to question the agency's determination that the technical superiority of Sharp's proposal, and Sharp's

^{1/} We note that the protester alleges that the contracting officer did not, as required by the Federal Acquisition Regulation, make the determination to award to Sharp. However, the record does contain a memorandum from the contracting officer recommending award to Sharp.

^{2/} While Encon also argues that, based solely on combined points including points for price, the scoring was close, (i.e., roughly 3 points difference between Sharp and Encon), MARAD's technical/cost tradeoff was also based on a written narrative justification that found Sharp's personnel experience worth the additional cost. In this connection, we have stated that point scores are useful only as guides to decision making and are generally not controlling because they often reflect the disparate, subjective judgment of evaluators. National Medical Seminars Temparmacists, B-233452, Feb. 22, 1989, 89-1 CPD ¶ 191.

direct experience, justified paying the higher evaluated price, since the agency could reasonably conclude that this would be of benefit to the ultimate success of the underlying multi-million dollar conversion project.

Encon also protests that MARAD failed to hold meaningful discussions with the firm concerning its corporate experience and proposed staff's qualifications. In this regard, Encon learned during a debriefing with the agency that its proposal was downgraded for a lack of corporate experience. Encon complains that MARAD did not notify it of this or any other technical deficiency during discussions, such as problems with proposed employees' qualifications, and thus that it was denied the opportunity to correct its proposal to meet the agency's needs. Encon argues that, given that it submitted the low-priced offer, if the agency had pointed out any suspected deficiency in its proposal, the firm may have been able to upgrade its technical proposal sufficiently to receive the contract award.

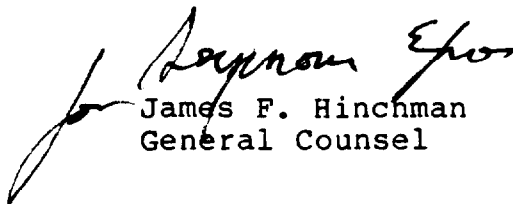
The agency reports, and the record confirms, that it did ask Encon to respond to a technical deficiency question regarding the personnel Encon proposed to have perform the required inspection services and that, based upon that response, the agency no longer considered Encon's proposal deficient. As to Encon's argument regarding any perceived inadequacies by the agency concerning the firm's corporate experience, MARAD states that it also did not view this as a proposal deficiency. Additionally, the agency states that Encon has not been prejudiced here since corporate experience was the least important evaluation factor. MARAD contends that even if Encon's corporate experience had been discussed prior to the submission of BAFOs, and Encon had been able to raise its rating for this factor, Sharp still would have had a higher rating for criteria (2) and (3), the two most important non-cost evaluation factors.

Here, as stated previously, the agency did not find any technical deficiencies present in Encon's proposal to warrant further discussions prior to the submission of BAFOs. An agency's decision not to engage in technical discussions is unobjectionable where a proposal contains no technical uncertainties. See Weinschel Engineering Co., Inc., 64 Comp. Gen. 524 (1985), 85-1 CPD ¶ 574; Information Management, Inc., B-212358, Jan. 17, 1984, 84-1 CPD ¶ 76. The RFP specifically notified all offerors of the evaluation criteria and their relative importance. The protester was given an opportunity to amplify the areas in its proposal that referred to its personnel and, in its own business judgment, chose to merely identify six individuals, any four of which might be performing the work. The record indicates

that although the agency no longer considered this a deficient aspect of its proposal, i.e., that the personnel proposed were acceptable, Encon's professional personnel qualifications simply were not ranked as high as Sharp's. Having once sought clarification of Encon's proposal regarding its personnel, we do not find that the agency was required to reopen discussions with the firm in this regard.

As to Encon's corporate experience, the weakness found here was in the firm's actual experience, rather than in how or the extent to which the experience was described in Encon's proposal. In such circumstances, discussions are not required, since actual experience is not something that can be improved as a result of the discussions. Cosmos Engineers, Inc., B-220000.3, Feb. 24, 1986, 86-1 CPD ¶ 186. Consequently, the agency did not act improperly in not giving Encon an opportunity to revise that aspect of its proposal.

The protest is denied. In view of our resolution of the protest, Encon's claim for costs is also denied. See Hydroscience, Inc., B-227989 et al., Nov. 23, 1987, 87-2 CPD ¶ 501.


James F. Hinchman
General Counsel